

CLERK'S COPY.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

NO. 392

1. Tiggs v. Woods, Housing Expediter,
Petitioner

CHARLES STONE

ON WRIT OF HABEAS CORPUS TO THE UNITED STATES DISTRICT
COURT OF DISTRICT OF COLUMBIA FOR THE ABOVE CAUSE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 932

FRANK R. CREEDON, HOUSING EXPEDITER, OFFICE
OF THE HOUSING EXPEDITER, PETITIONER

VS.

CHARLES STONE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SIXTH CIRCUIT

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1 In the United States District Court, Northern District of
Ohio, Western Division

CHESTER BOWLES, ADMINISTRATOR, OFFICE OF PRICE
ADMINISTRATION

vs.

CHARLES STONE

Complaint

Filed Feb. 1, 1946

2 1. Plaintiff, as Administrator of the Office of Price Administration, brings this action on behalf of the United States of America under Sections 2, 4, 205 (c) and 205 (e) of the Emergency Price Control Act of 1942 as amended (50 U. S. C., Sections 902, 904, 925 (c) and 925 (e)), as hereinafter more fully appears.

2. At all times material hereto, there has been, and now is, in full force and effect the Rent Regulation for Housing (8 F. R. 14663) as amended, hereinafter referred to as the "Regulation," which prescribes maximum rents for the use or occupancy of housing accommodations in the Columbus-Indiana Defense-Rental Area.

3. During all times mentioned herein defendant was the landlord of housing accommodations situated at 148 West Washington Street, Mooresville, Indiana, within said Defense-Rental Area.

4. On or about the first day of August 1944, defendant rented said housing accommodations for the first time since said Rent Regulation became effective on September 1, 1942, in said Defense-Rental Area.

5. Defendant failed to file a registration statement with the Price Administration within thirty days from the first rental as required by Sections 4 (e) and 7 of said Regulation.

6. On or about the first day of August, September, October, November, and December, 1944, and January, February, March, and April, 1945, defendant demanded and received from C. F. A. Locke, tenant in said housing accommodations, the sum of \$75.00 per month as rent for the use or occupancy thereof.

7. On or about the 29th day of June 1945, the Rent Director for said Defense-Rental Area, pursuant to Sections 5 (c) (1), 5 (d) and 4 (e) of said Regulation, issued an order effective as of the date of the first renting of said housing accommodations, or from the beginning of the first rental period, on or after October 1, 1943, or the effective date of the Regulation, which ever

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FRANK R. CREEDON VS. CHARLES STONE

3 is later, decreasing the maximum rent on said housing accommodations from \$75.00 per month to \$45.00 per month.

8. A copy of said order decreasing the maximum rent was mailed to defendant on or about the 29th day of June 1945.

9. Defendant has at all times failed or refused to refund to the said tenant the sum of \$270 collected from said tenant in excess of the legal maximum rent prescribed by said order of the said Rent Director.

10. More than thirty days have elapsed since the occurrence of the violations and the tenant has failed to institute an action under Section 205 (e) of the Act.

11. Three times the amount by which the rent demanded and received by defendant from said tenant exceeded the legal maximum rent prescribed by said order of the Rent Director and which sum defendant failed or refused to refund to said tenant equals \$810.00.

Wherefore, plaintiff prays judgment on behalf of the United States of America against defendant in the sum of \$810.00 and the costs of this action.

Dated: February 1, 1946.

Of Counsel for Plaintiff:

(S) **WALTER J. HEDDESHEIMER,**
District Enforcement Attorney,

(S) **PAUL MARSHALL,**
Attorney in Charge of Case,

Address: Office of Price Administration, Cleveland District Office, 226 Union Commerce Building, Cleveland 14, Ohio, Telephone: CHerry 7900.

(S) **WILLIAM K. ROSE,**
Litigation Attorney,

Address: 307 Superior Street, Toledo Ohio; Telephone: Garfield 8393.

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In United States District Court

Appearance

Filed February 20, 1946

To the Clerk:

Please enter my appearance as Defendant in the above entitled cause.

(S) **CHARLES STONE,**
Defendant, In Pro Per,
2506 Scottwood Street, Toledo, Ohio.

In United States District Court

Answer to complaint

Filed February 20, 1946

Now comes Charles Stone, in pro per, Defendant in the above entitled Cause, and for answer to the Complaint filed therein, says:

1, 2, 3. Answering the allegations contained in said paragraphs, the Defendant admits the same.

4 and 5. The Defendant admits the allegations contained therein; however, the monthly payment received by the Defendant from C. F. A. Locke was the rent for premises at 2506 Scottwood Avenue, Toledo, Ohio—premises occupied by the Defendant herein, under an agreement whereby Mr. Locke was to pay whatever rent was necessary for a residence for the Defendant in the City of Toledo, Ohio, in exchange for immediate occupancy of the Charles Stone home at Mooresville, Indiana; and further, this explains the reason why it was unnecessary for this Defendant to register the Mooresville property, because the remuneration was paid for the Scottwood Avenue residence.

6. The Defendant denies the allegations contained in said paragraph.

7. The Defendant denies that he was the owner of the Mooresville property on June 29, 1945, and further states that any order issued by the O. P. A. for rent as of that date could have no reference to this Defendant; and that Docket No. 20-691 refers to Wm. H. Henley and not to this Defendant.

8. The Defendant admits receipt of the order, and further avers that following June 29, 1945, the Defendant negotiated with the tenant for settlement of damages claimed by Defendant for malicious destruction of the Mooresville property; failing on arriving at a settlement, the Defendant instituted suit against the said Locke in Martinsville, Morgan County, State of Indiana, being case No. 23695, said proceedings having been instituted August 25, 1945, and is presently pending in said Court and awaiting trial; and that in said suit the defendant in that suit, Locke, is claiming overcharges due allegedly; and that in said suit the Defendant herein as plaintiff is claiming damages in the sum of Fifteen Hundred (\$1,500.00) Dollars—an amount greatly in excess of the within action.

9. The Defendant denies the allegations contained therein; further answering, the Defendant prays for reference to the answer made in paragraph No. 8.

10. The Defendant denies the allegations contained therein; further elucidating, the Defendant states the truth to be that ac-

tion is now pending between this Defendant and C. F. A. Locke as is explained in paragraph No. 8; and further, the Defendant alleges that as regards any claims for August, September, October, November, December, 1944, and January and February, 1945,—those dates are more than one (1) year previous to the filing of the within Cause on February 1, 1946—and therefore under Sec. 205-E of the Emergency Price Control Act of 1942, as amended, by the Stabilization Act of 1944, action for those months is barred, and no valid claim can be made for such:

11. The Defendant denies that the Plaintiff is entitled to recover in this action, for the reason that settlement or trial is about to be reached in the pending action in Morgan County Court, as is more particularly set forth in paragraph No. 8.

Wherefore, this Defendant prays that the within cause of action be dismissed with costs to the Defendant.

(S) CHARLES STONE,
Defendant, in pro per.

Dated: Toledo, Ohio, February 18, 1946.

In United States District Court

Transcript of testimony

Filed January 9, 1947

Transcript of testimony and proceedings in the above entitled cause before Hon. Frank M. Kloeb, District Judge, on June 25, 1946.

Appearances

W. K. Rose, Esq., for the Plaintiff.
Ethleen M. Stevens, for the Defendant.

Plaintiff's offers in evidence

The Plaintiff, to maintain the issues on his part to be maintained, offered the following evidence:

Mr. ROSE. If the Court please, I have the original registration and the original order decreasing rent and would like to leave at this time to substitute for them and offer the substitutes as Exhibits 1 and 2 of the Plaintiff. Do you have any objection to it?

Miss STEVENS. No.

Mr. ROSE. It is understood the defendant has no objection to the introducing of these exhibits in evidence?

Miss STEVENS. That is right.

° The COURT. Has the Clerk identified them?

7 The CLERK. No, Your Honor. They have not been submitted to me for marking.

(Papers referred to marked "Exhibit 1" and "Exhibit 2".)

The COURT. Let me see them.

(Exhibits 1 and 2 handed to Court by the Clerk.)

The COURT. Very well; they may be admitted.

Mr. ROSE. May it also be stipulated, Miss Stevens, that commencing August 1, 1944, and for the following eight months or a total of nine months, ending April 1945, the defendant, Charles W. Stone, received checks each month in the amount of \$75.00 from Mr. C. F. A. Locke?

Miss STEVENS. They may be offered for what they are worth.

Mr. ROSE. Plaintiff offers Exhibit 3, which consists of checks bearing the signature and endorsement of Mr. Stone, in evidence.

The COURT. They will be admitted.

Mr. ROSE. With that, Your Honor, the plaintiff rests.

Thereupon the Defendant, to maintain the issues on his part to be maintained, offered the following evidence:

Defendant's opening statement

Miss STEVENS. Your Honor, it is our contention—I would like to review, with Your Honor's consent—that this was an exchange of property; that in January 1945, a copy of the contract between these parties, Mr. Locke and Mr. Stone, was mailed to the Area Rent Control Office. A reply came from that office, by way of a booklet, telling how to evict tenants; nothing in there regarding registration, and nothing was done until June 11th, when a letter came from the Area Office asking him to register. He made a reply to that letter that there was no rental agreement—we have the signed letter from Mr. Locke, stating that there was an exchange of property. We have other evidence which we would like to offer at this time.

The COURT. Very well.

8 Mr. ROSE. So as to make our position clear and not interrupt the examination, it is our contention that this so-called exchange and so-called agreement was void; that they are expressly prohibited by the regulations; that they have no bearing in this case, and as far as the response of the Area Rent Office is concerned, I have the correspondence so I will go into that. I will state that now, because I do not want to interrupt the examination, but we are objecting to anything in the nature of the agreement between the parties.

Miss STEVENS. There is a case pending in the Morgan County court between landlord and tenant for destruction of property, and the defendant has continually claimed a set-off because of

these overcharges, and the amount of the claim for damages far exceeds the amount of any overcharges. Further, we are claiming under Section 205-e of the Act, action by either the tenant or the landlord was prepared as of February 1st. All rent receipts prior to that are more than one year old, and under Section 205-e no action could arise on those receipts.

Thereupon the Defendant,

CHARLES W. STONE, having been first duly sworn, testified in his own behalf as follows:

Direct examination by Miss STEVENS:

Miss STEVENS: I would like to offer in evidence, Your Honor, the original contract and the letter that accompanied that, a copy of which was mailed to the Area Rent Office.

The COURT. What week was that mailed?

Miss STEVENS. January 16, 1945. Here is the receipt for the registered letter.

(Defendant's Exhibits A and B handed to the Court; also Exhibit C.)

I would like to offer this reply of the Area Rent Office; no actual reply, just printed material was sent in reply.

I would like to offer in evidence, also, a letter of the other party to this contract, Mr. Locke, under date of January 23, 1945.

Q. What is your name?

9 A. Charles W. Stone.

Q. Where do you reside, Mr. Stone?

A. At the present time, 6123 Ralston Avenue, Indianapolis, Indiana.

Q. Did you ever rent the property concerned in this lawsuit at any time, Mr. Stone?

A. I never did.

Q. Did you at all times live in the property while you were owner of the property?

A. Until August 1, 1944.

Q. What occurred on August 1, 1944?

A. I entered into an agreement with Mr. Locke to trade properties from my position at Toledo, Ohio, to his position at Mooresville, Indiana.

Q. What led up to that contract?

A. My house was up for sale at Mooresville. He proposed to rent the house, but I wouldn't rent. So I traded my house in Mooresville to him for his house in Toledo.

Q. Did you make a contract to that effect?

A. Yes.

Q. Is this the contract, that has just been offered in evidence?

A. Yes, Exhibit A.

The COURT. What is the date of that contract?

Miss STEVENS: 7-28-1944.

Q. Did you ever mail a copy of that contract to the Area Rent Office?

A. Yes; July 16, 1945.

Q. Is that a copy of the letter that you mailed to them at that time?

A. Yes.

Q. That is Exhibit B. What reply, if any, did you receive after the mailing of that letter?

A. Some pamphlet on rent control—printed matter.

Miss STEVENS: That is Exhibit D.

Q. Is that what you received in return for your contract?

10 A. I found nothing in this that prohibited the trading of properties.

Mr. ROSE. I move to strike that as not answering the question.

The COURT. Sustained.

Q. I will ask the question over. Is this what you received in return, in reply to your letter and the contract?

A. Yes, it is.

Q. What did you find in that?

A. Rent regulations for houses, and questions and answers on rent control.

Q. Did it tell you that you should register this property?

A. If it was rented; yes.

Q. Did you register it?

A. No; I did not.

Q. Why?

A. I found nothing in the order that mentioned trading of properties.

Q. What is the next communication that you received regarding the property?

A. The next communication I think is June 1st.

Q. What was that communication?

A. I was asked to register the property by the Rent Control.

Miss STEVENS. I would like to offer in evidence a communication of June 11, 1945, marked "Defendant's Exhibit F."

Q. Can you identify that communication, Exhibit F?

A. Yes; I received this communication.

Q. What did it tell you to do?

A. To register the property at Mooresville, Indiana.

Q. Were you the owner of the property on that day?

A. No.

Q. Had you received any prior communication telling you to register that property?

A. Not to my knowledge.

Mr. ROSE. Objection, because Exhibit D covers that.

11 The COURT. I will allow his answer to stand for what it is worth.

Miss STEVENS. Exhibit D—you mean the pamphlet setting forth how to remove tenants?

Mr. ROSE. That's right, and how to register properties.

Q. What was the next communication that you received, Mr. Stone?

A. On June 29th—I received a copy of the order decreasing maximum rent.

Q. Mr. Stone, they sent Exhibit G to you on June 2nd, a proposed order reducing what they called the rent on the Mooresville property, and was this your reply to that letter?

A. Yes; that is my reply.

Q. The date of the reply was the 23rd of June, Exhibit H, and after that you received an order from the OPA reducing the amount that was to be received on this contract, did you—referring to Plaintiff's Exhibit 2; you received this order?

A. Yes; I have.

Q. And after you received this, did you have any contract with the tenant regarding this, what they allege as an offer?

A. Yes; I talked with the tenant in regards to refunding the money to him, and the damage and the overcharge, which he refused.

Q. Did you make an outright offer regardless of the damage to the property?

A. Yes.

Q. When you received this did you talk with him about giving back some of this money?

A. I made an offer to offset the damages to his property.

Q. Was he still living in that property at that time?

A. Yes, he was.

Mr. ROSE. May I object to the last three questions for the reason that there is no proof Mr. Stone ever had an action filed against him by the tenant for overcharges.

12 Miss STEVENS. Mr. Stone sued the tenant in the Morgan County court, and previous to that the tenant had made claim for overcharges.

The COURT. I will let it stand.

Q. This registration which is Plaintiff's Exhibit 1, is that your registration?

A. No; it is not my registration.

Q. Who signed that registration?

A. It is signed William H. Henley.

Q. When was action taken against you by the Federal Government, Mr. Stone—on what date?

A. February 1, 1946.

Q. Did you have any discussion with the Area Rent Office at that time about settling the case out of court? Did you offer settlement to them?

A. I offered to settle, in the presence of two attorneys.

Q. And that settlement was refused?

A. That is right.

Miss STEVENS. That is all.

Cross-examination by Mr. ROSE:

Q. You say you offered a settlement to me?

A. Yes.

Q. In what amount?

A. Three months' overcharge; \$90.00.

Q. You are certain of that?

A. Yes.

Q. Isn't it a fact that you conferred with me and walked out of the office after you were in there a few minutes, stating you would not settle for any amount?

A. I offered you three months settlement, and you laughed at me.

Q. You got mad and walked out with great anger.

A. I did, after you threatened me with criminal prosecution.

Q. You know that is a false statement. You know I never threatened you with criminal prosecution?

A. Yes, you did. You said you would prosecute me criminally. I said would that be a civil prosecution. You said, no.

Q. Do you mean to tell the Court I threatened to prosecute you criminally?

A. You or your assistant.

Q. Who was my assistant?

A. I don't know. I think it was Heddisheimer.

Q. He was present but he was not in on this rent matter. Was this statement made in the presence of Mr. Heddisheimer?

A. I don't know if that was the one, but you said you would prosecute me criminally.

Q. Mr. Stone, will you read Plaintiff's Exhibit 4, which is a letter addressed to you, June 26, 1945, by the Area Rent Director at Columbus, Indiana, and state whether or not you received the original of this letter.

A. Yes; I received the original of this letter.

Q. Mr. Stone, this Exhibit D that you referred to—I believe the pamphlet—you read that pamphlet on how to register properties?

A. Yes.

Q. Now you presented this contract to the Area Rent Office in Indiana on or about July 28, 1944; is that correct?

A. January 16th.

Q. Then you received a response to that inquiry shortly thereafter; is that correct?

A. January 18th they mailed me the pamphlet.

Q. I want to be sure. What is the date that you directed that to the Area Rent Office?

A. January 16th.

Q. Of 1945; is that right?

A. Yes; that's right.

Q. Now if I understood your examination correctly, you stated to your attorney the next communication you received was June 21, 1945?

A. After I received the pamphlet in answer to my letter of June 16th, the only one I have a record of. I am not sure.

Miss STEVENS. I think the notes of the reporter will show June 11th was the next.

14 Q. Do you have a record of any correspondence between you and the Area Rent Office from January to June 11, 1945, other than what you have presented so far?

A. I don't know.

Q. Did you have a conversation of any manner or form with the Area Rent Office prior to January 1945?

A. Yes.

Q. What was that?

A. I went to the office in Toledo—the Toledo Rent Office, and inquired before I entered into that contract in July whether or not this was in violation of any OPA rules.

Q. What was the date of that conversation?

A. In July; prior to the signing of this contract.

Q. Can you be a little more specific?

A. July 15th.

Q. 1945?

A. 1944.

Q. Do you know to whom you talked?

A. To the man in charge of the Rent Office.

Q. Mr. Bolan?

A. Yes.

Q. What did he tell you?

A. He told me nothing in the order covered trading in properties.

Q. Isn't it a fact he told you the Toledo office had nothing to do with the matter because it was an Indiana property?

A. No; he didn't, because trading a house in Toledo for a house in Indianapolis clearly concerns both offices.

The COURT. That is your argument now. The question is, did Mr. Bolan of this Rent Office tell you that he was not concerned with the matter because your property was located in Indiana? Did he tell you that?

The WITNESS. Not specifically, as I recall it.

The COURT. All right.

Q. However, on June 26, 1945, when you heard from Mr. Bowman, of Columbus, Indiana, he did tell you that,
15 isn't it a fact, that the Indiana office had jurisdiction over Indiana matters?

A. That is true.

Q. Do you know whether or not there has been any complaint about this property in Toledo that concerned the Area Rent Office in Toledo; do you know?

A. No.

Q. Mr. Stone, you were the owner of this property in question in Indiana on August 1, 1944; is that correct?

A. That is correct.

Q. You were the owner continuously up until a date in 1945; is that right?

A. Yes.

Q. Do you recall the exact date of the sale to Mr. Henley?

A. April 2nd.

Q. It is a fact you sold the property to Mr. Henley which now appears on this registration statement?

A. Yes.

Q. Where did you reside from August through 1944?

A. 2506 Scottwood.

Q. When did you vacate 2506 Scottwood?

A. March 1, 1946.

Q. I am handing you now, Mr. Stone, Plaintiff's Exhibit 5, which is a letter dated June 7, 1945, addressed to you. Will you state whether or not you received the original of that letter?

A. Yes; I believe I received it.

Q. You did?

A. I believe so.

Mr. ROSE. May the record show that the original is here in Court, Miss Stevens?

Miss STEVENS. Very well.

Q. I am handing you Plaintiff's Exhibit 6, which is a letter addressed to you June 13, 1945. Will you state if you received the original of that letter?

A. I believe so. I don't know whether I did or not.

Mr. ROSE. May the record show that the original is here?

16 Miss STEVENS. Yes.

Q. Did you at any time in the year 1944 contact the Area Rent Office at Columbus, Indiana, with reference to this matter of renting the property, Mr. Stone?

A. No; I did not.

Q. Your first contact in the year 1945 was your letter in the early part of January; is that correct?

A. That is correct.

Q. You at no time ever made a registration for that property?

A. No; I did not.

Mr. ROSE. That is all.

Miss STEVENS. That is all.

The COURT. Just a minute. Let me have the contract.

By the COURT:

Q. I notice, Mr. Stone, this contract with Mr. Locke, dated in July 1944, says that Mr. Locke gives to you the right to act as the agent for Mr. Locke in securing for him suitable living quarters in Toledo, Ohio. Was that what it was all about?

A. That is correct; yes.

Q. Well you were taking the living quarters in Toledo, weren't you?

A. Well—he had another agent. I acquired possession through his agent—his headquarters at Toledo, Ohio.

Q. Was he to pay you \$75.00 a month for acting as his agent?

A. He reimbursed me up to that amount. —

Q. Agent for what?

A. To reimburse me for rent paid out.

Miss STEVENS. May I say a word? I think you should explain to the Court that it was through contacts of his that you secured a place in Toledo, and the \$75.00 was to apply on whatever rent was available. I wish you would explain that arrangement you had.

The WITNESS. That is true. His proposition was to acquire a house over here in Toledo and we would trade houses.

17 Q. He agreed to pay you \$75.00 a month starting August 1st, under this contract?

A. Yes.

Q. What was that for?

A. That was to reimburse me for rent paid on his account at Toledo.

Q. You were paying some rent on his account in Toledo?

A. Yes.

Q. How is that? He was living in your property at Mooresville, Indiana, wasn't he?

A. Yes.

Q. What was he paying you for that?

A. Nothing at all. We traded houses.

Q. There were no deeds exchanged?

A. No. Just the use of the property.

Q. How did you trade the property, then?

A. We traded the use of the property only.

Q. What were you paying him for living in his property at Toledo?

A. We traded the use of the property in Mooreville, and the use of the property in Toledo.

Q. And in addition he paid you \$75.00 a month?

A. Which I turned over to the landlord in Toledo for his account.

Q. What were you paying him for living in his property in Toledo?

A. No actual money.

Q. You weren't paying him anything for living in his property in Toledo?

A. No.

Q. But he was paying you \$75.00 a month?

A. Only as agent, which I in turn turned over to the landlord here to his account.

Q. Who is the landlord?

A. Mrs. Dolber.

Q. Where did she come into the picture?

A. She owned the house at 2506 Scottwood.

Q. I thought you said that was Locke's property?

A. No, it was—

18 Q. Where was Locke's property?

A. Locke loaned the property, which is the property over here, through his agent, which is me.

— The COURT: I don't think I could recognize such an agreement as that. I think the Court could conclude Mr. Locke was paying Mr. Stone \$75.00 a month, and that was for the rent of his property at Mooreville, Indiana. How else could the Court conclude?

Miss STEVENS. I realize, Your Honor, and I told him myself, although the rent on the first place Mr. Locke found for him was \$125.00, a place on the outskirts, in a little subdivision, and he agreed to pay \$75.00 towards this \$125.00 rental agreement. I told him I was afraid the thing really had to be recognized as a payment of \$75.00. Because of that he offered to pay overcharges, both to the tenant and the Area Rent Office, but we are claiming at this time because of Section 205-e that they cannot make any valid claim for more than the valid receipts they can show, and they cannot show anything back on February 1, 1945. Receipts back one year would be valid receipts. Back of that, under Section 205-e of the Act, action would be barred on those earlier receipts.

The COURT. It seems to me that is the only defense you have here.

Miss STEVENS. We have made an offer to consent to a judgment for that amount.

The COURT. That seems to me the only question I have to consider here. You can see the Office of Price Administration could not concern itself with such an arrangement as this in trying to enforce the rent regulations.

Miss STEVENS. Of course, these parties made this contract without benefit of counsel.

The COURT. I think that is clear. I do not think any counsel would have drafted such an agreement.

Miss STEVENS. Had there been a lawyer, all of this would have been avoided.

Mr. ROSE. I have here Mr. Patterson, who is the Area Rent
19 Director of the Toledo office, and I propose to put him on the stand to show that there was nothing involved so far as Toledo is concerned.

The COURT. I can well see without the necessity of any evidence that there can be no question about that. This property is located at Mooresville, Indiana. That is where the rent was paid, and it is alleged to be in violation of the rent regulation. I don't see how any property here under this contract, or supposed contract, could be involved.

Well is there anything further that you have to offer?

Miss STEVENS. Nothing further, Your Honor.

The COURT. That will be all.

Mr. ROSE. As I understand from the Court, it isn't necessary to have Mr. Patterson so testify as I have indicated.

The COURT. I do not think that is necessary. As I understand it, you expect to offer him to show that the Toledo Office was not concerned.

Mr. ROSE. Yes. We have the motion on Toledo jurisdiction, and Mr. Patterson would testify as I indicated. If it should be any help, I am perfectly willing to, within one week, file a further brief on the one question.

The COURT. That is the only question I have in mind. That is the question of the applicability of the statute of limitations, within the Act. If you have some particular section that takes it out of the Act under this situation, then I would like to have you cite it to me, and give counsel in opposition an opportunity to answer it.

Mr. ROSE. If we may have one week from today, I would be glad to do that.

Miss STEVENS. I would be glad to furnish a brief, also.

The COURT. Anything further?

UNITED STATES

GENERAL INSTRUCTION

The landlord is

PLAINTIFFS' EXHIBIT

UNITED STATES OF AMERICA
OFFICE OF PRICE ADMINISTRATION
REGISTRATION OF RENTAL DWELLINGS
(TYPE OR PRINT PLAINLY-DO NOT FOLD)
(Do Not Use This Form for Hotels and Rooming Houses)

Form Approved Bureau
 Bureau No. OP-R079-43
 Form DD-U
 Rev'd 9-44 Reg'n V-350

AREA OFFICE
COPY

GENERAL INSTRUCTIONS

The landlord is required to register separately each rental dwelling unit, whether occupied or vacant. A dwelling unit is a room or a group of rooms for which a single rent is paid. Complete this Registration Statement in triplicate. (If not typewritten, be sure sufficient pressure is used so that both carbon copies are clear and distinct.)

Remove carbons, and mail or bring the three copies to the Area Rent Office.

Use extra sheets, in triplicate, for sections "D" & "E" if necessary.

Maximum Rent _____ Effective Date _____
 Rent _____ Date _____
 Date _____

IDENTIFICATION

1. 148 W. Washington St. Mooresville, Ind.
 Address of this rental dwelling unit
2. _____
 Apartment number or location 10
3. Number of Rooms in unit being registered _____
4. Total Number of dwelling units in this structure 1

SECTION A. MAILING ADDRESS OF LANDLORD

1. Name of Landlord, Wm. H. Henley
2. Name of Agent _____
3. Address Mail to: ↓

Name William H. Henley

Address 327 West Main Street

City and State Mooresville, Indiana

SECTION B. MAILING ADDRESS OF TENANT

Name of Tenant Charles W. Leake

Address 148 W. Washington Street

City and State Mooresville, Indiana

Registered
 Area Rent
 Office
 OPA

SECTION C. MAXIMUM RENT

Read carefully and fill in every item which applies to this dwelling unit.

1. Rent on "Maximum Rent date" \$ _____ per week () per month ()
2. Not rented on "Maximum Rent date" but rented at any time during the two-month period ending on "Maximum Rent date."
 Date last rented during that two-month period: _____ 194 _____
 Rent on that date: \$ _____ per week () per month ()
3. Not rented on "Maximum Rent date" nor at any time during the two-month period ending on "Maximum Rent date," but rented after "Maximum Rent date."
 Check one box if applicable:
☐ (a) Owner occupied or vacant on "Maximum Rent date" and during two-month period ending on "Maximum Rent date."
☐ (b) Newly constructed without priority rating.
☐ (c) Newly constructed with priority rating. (If checked, item 6 must also be filled in)
- Date first rented after "Maximum Rent date" May 7 1945 by no as purchase on April 7, 1945.
4. Rent on that date: \$75.00 per week () per month ()
5. Dwelling unit made available by a change which resulted in an increase or decrease in the number of dwelling units after "Maximum Rent date."
 Date first rented after such change: _____ 194 _____
 Rent on that date: _____ per week () per month ()
6. Substantially changed after "Maximum Rent date," but before the effective date. Check one box if applicable:
☐ (a) From unfurnished to fully furnished.
☐ (b) From fully furnished to unfurnished.
☐ (c) By a major capital improvement AS DISTINGUISHED FROM ORDINARY REPAIR, REPLACEMENT AND MAINTENANCE.
- Date first rented after such change: _____ 194 _____
 Rent on that date: \$ _____ per week () per month ()

6. Dwelling unit newly constructed with a priority rating from the United States or any agency thereof.
 Rent approved by agency granting priority: \$ _____ per week () per month ()

THE MAXIMUM RENT FOR THIS DWELLING UNIT IS:

\$75.00 per week () per month ()

Enter Maximum Rent in accordance with the following instructions:

- (a) If only one of the above items applies to this dwelling unit the Maximum Rent is the rent entered for that item.

SECTION D. EQUIPMENT AND SERVICES

(Check the equipment and services included in the rent on "Maximum Rent date" or the most recent date you entered in Section C.)
 (ANSWER "YES" or "NO")

1. EQUIPMENT YES NO
- Furniture ☒ ☐
- Running Water ☒ ☐
- Hot Water ☒ ☐
- Flush Toilet ☒ ☐
- Bathroom ☒ ☐
- Central Heating ☒ ☐
- Heating Stove ☒ ☐
- Mech. Refrigerator ☒ ☐
- Electricity Installed ☒ ☐
- Cooking Stove ☒ ☐

If any equipment is shared, explain below:

oil burning hot water 1

2. SERVICES YES NO
- Garage ☒ ☐
- Heat or Heating Fuel ☒ ☐
- Cooking Fuel ☒ ☐
- Cold Water ☒ ☐
- Hot Water ☒ ☐
- Light ☒ ☐
- Ice or Refrigeration ☒ ☐
- Janitor Service ☒ ☐
- Garbage Disposal ☒ ☐
- Painting & Decorating ☒ ☐
- Interior Repairs ☒ ☐
- Exterior Repairs ☒ ☐
- List any other services: _____

5. Substantially changed after "Maximum Rent date," but before the "effective date." Check one box if applicable:

- ☐ (a) From unfurnished to fully furnished.
☐ (b) From fully furnished to unfurnished.
☐ (c) By a major capital improvement AS DISTINGUISHED FROM ORDINARY REPAIR, REPLACEMENT AND MAINTENANCE.

Date first rented after such change: _____ 194_____

Rent on that date: \$ _____ per week () per month ()

6. Dwelling unit newly constructed with a priority rating from the United States or any agency thereof.

Rent approved by agency granting priority: \$ _____ per week () per month ()

THE MAXIMUM RENT FOR THIS DWELLING UNIT IS:

175.00 per week () per month ()

Enter Maximum Rent in accordance with the following instructions:

- (a) If only one of the above items applies to this dwelling unit the Maximum Rent is the rent entered for that item.
(b) If more than one of the above items apply to this dwelling unit the Maximum Rent is the rent reported for the most recent date; except in the case of item 6.
(c) If item 6 applies to this dwelling unit the Maximum Rent is the lower of the rents entered in items 1, 3 or 6.
* Note: If any one of the items 3(b), 4 or 5 applies to this dwelling unit you must also fill in the information required in Section "E." The Rent Director may at any time order a decrease in the Maximum Rent determined under items 3(a), 3(b), 4 or 5, on the grounds that the rent is higher than the rent prevailing for comparable housing accommodations on the "Maximum Rent date."

8. Order issued by Rent Director dated _____ established maximum rent in amount of \$ _____ per week () per month ()

Section E - See Note Section C. 7*

If item 3(b), 4 or 5 of Section C was filled in, set forth in specific detail the type and cost of:

- (a) New construction (c) A change from unfurnished to fully furnished
(b) A change in the number of dwelling units (d) A major capital improvement

Del. Reg. - Former I.I. was Chas. Stone who started
renting to this tenant 8-1-44 30.691 (50-1-54)
Maximum Rent Changed by Order of
Rent Director 6/30/45 to \$45.00
per month.

EXHIBIT "1"

20

2. SERVICES	YES	NO
Garage	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Heat or Heating Fuel	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Cooking Fuel	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Cold Water	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Hot Water	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Light	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ice or Refrigeration	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Janitor Service	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Garbage Disposal	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Painting & Decorating	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Interior Repairs	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Exterior Repairs	<input checked="" type="checkbox"/>	<input type="checkbox"/>

List any other services: _____

Are all equipment and services indicated above now included in the rent? Yes () No ()
If "No" you must also file Form D-2.

WARNING

The rent for this dwelling unit on and after the "effective date" can be no more than the Maximum Rent entered in Section C, Item 7, unless changed by order of the Rent Director (see Section C, Item 8).
A false statement on this form or an evasion or attempted evasion of the Maximum Rent Regulation may subject you to a \$5,000 fine or imprisonment for one year.
I HEREBY REPRESENT that all statements and entries given herein are true and correct.

(Signed) Wm. H. Hawley
Rent Director

Mr. ROSE. Nothing further.
Miss STEVENS. No.

23

Plaintiff's Exhibit 2

Copy

OPA
Form D-38

United States of America

Office of Price Administration

ORDER DECREASING MAXIMUM RENT

Stamp of Issuing Office. Area Rent Office, 633 Washington Street, Columbus, Indiana.

Concerning (Description of Accommodations): 148 West Washington Street, Mooresville, Indiana. Docket No. 20,691.

To (Name and Address of landlord): Charles W. Stone, Box 296, Toledo, Ohio.

Due notice having been given the landlord of the above-described accommodations, the Rent Director has considered the evidence in this matter and finds that the facts in this case require a reduction of the Maximum Rent on the grounds stated in Section (s) 5 (c) (1) and 5 (d) of the Rent Regulation.

Therefore, on the basis of the rent which the Rent Director finds was generally prevailing in this Defense-Rental Area for comparable housing accommodations on the Maximum Rent Date, it is ordered that the Maximum Rent for the above-described accommodations be, and it hereby is, changed from \$75.00 per month to \$45.00 per month.

Issued June 28, 1945 and effective beginning (see below). No rent in excess of the Maximum Rent established by this order may be received or demanded. This order will remain in effect until changed by the Office of Price Administration.

(S) WILLIAM J. BOWMAN.

Rent Director.

24

From the date of such first renting or from the beginning of the first rental period on or after October 1, 1943, or the effective date of the Regulation, whichever is the later.

Copy to (Name and Address of Tenant): C. F. A. Locke, 148 West Washington Street, Mooresville, Indiana.

The Landlord shall refund to the Tenant any rent Received on or after the effective date of this order in excess of the Maximum

Rent established herein (\$45.00 per month) within 30 days after date of this order.

Plaintiff's Exhibit 3

(Plaintiff's Exhibit "3" consists of eight (8) checks, in the sum of \$75.00 each, numbered 34, 38, 49, 58, 76, 98, 102, and 115 issued as of July 29, 1944, September 1, 1944, October 3, 1944, November 2, 1944, December 5, 1944, January 17, 1945, January 31, 1945 and March 12, 1945, by C. F. A. Locke to the order of Charles W. Stone. All eight (8), bearing endorsement of C. W. Stone and bank and clearing house stamps are substantially as follows:)

FLETCHER TRUST COMPANY

INDIANAPOLIS, IND.

No. 34
7-29-1944.

Pay to the Order of _____
Charles W. Stone _____ \$75.00
Seventy-five Dollars and _____ 00 Cents
(S) C. F. A. LOCKE.

25

Plaintiff's Exhibit 4

AREA RENT OFFICE
633 Washington Street
COLUMBUS, INDIANA

JUNE 26, 1945.

Re: 20,691-148 West Washington Street, Mooresville, Indiana

MR. CHARLES W. STONE,
Box 296, Toledo, Ohio.

DEAR SIR: This is in reply to your letter of June 23, 1945, relative to the above-described housing accommodation and the notice of proceedings to determine the maximum rent therefor.

All matters relating to housing and the Regulation pertaining thereto which is situate in this Defense Rental Area of which Mooresville, Indiana, is a part are strictly the province of this, the Columbus, Indiana, Defense Rental Area, therefore, the Area Rent Office of Toledo, Ohio, properly advised you that housing situated in this Area is the concern of this office.

You ask what part of the Rent Regulation was violated by this "exchange;" attached hereto you will find a copy of the Regulation for Housing now in effect in this Area and I direct your particu-

lar attention to Section 4, subsection (e), also Sections 7, 9, and 12 of the above Regulation.

The notice given to you on June 21, 1945, was to inform you as to the proceedings by this Director to adjust the maximum rent upon the above-described housing accommodations as provided by Section 5 (c) (1) of the Regulation, and to give you an opportunity to file written objections thereto.

Attached hereto you will find a copy of Section (e) of Section 205 of the Emergency Price Control Act of 1942; as amended, to which your attention is also directed.

26 I think that this will properly inform you; however, if there are further questions that you have relative to the above matter we will be glad to inform you to the best of our ability.

Yours very truly,

WILLIAM J. BOWMAN,
Area Rent Director-Attorney.

CC: Mr. Henry J. Zetzer.

Plaintiff's Exhibit 5

3721

OFFICE OF PRICE ADMINISTRATION RENT DIVISION

AREA RENT OFFICE

633 Washington Street

COLUMBUS, INDIANA

JUNE 7, 1945.

CHAS. W. STONE,

P. O. Box 296, Toledo, Ohio.

DEAR SIR: According to the records of this office it does not appear that you have filed a registration statement for the dwelling units rented by you at: 148 W. Washington St., Mooresville, Indiana.

State

Street

Apt. No.

City

Under the provisions of the rent regulations, landlords renting any type of living quarters were required to register on or before Oct. 15, 1942. Where housing accommodations are added to the premises or first rented after Oct. 15, 1942, the registration form must be filed within 30 days after the rooms or apartments are first rented.

27 Since the registration form is now overdue, it would appear that you may be in violation of the law. You are therefore requested to fill in the enclosed registration statement with complete and legible information and return all copies to this office immediately. When edited the landlord's copy will be returned to you.

This property is not registered until the correctly completed form is received by this office.

Yours very truly,

WILLIAM J. BOWMAN,
Area Rent Director,
Columbus Defense-Rental Area.

Enclosure.

Plaintiff's Exhibit 6

AREA RENT OFFICE
633 Washington Street
COLUMBUS, INDIANA

JUNE 13, 1945.

In Re: 148 West Washington Street, Mooresville, Indiana

Mr. C. W. STONE,
P. O. Box 296, Toledo, Ohio.

MY DEAR MR. STONE: We have information that on or about the first day of August 1944 you were the owner of the property situate at 148 West Washington Street, Mooresville, Indiana, and at that time rented said property to a tenant by the name of Charles Locke, charging therefor, as rental, \$75.00 per month.

If this is the facts, then under the Regulation for Housing now in effect in this area you were required within thirty days from the first renting thereof to file in the area rent office a registration statement, and your failure so to do would be a direct violation of the Regulation.

Enclosed herewith you will find a form of registration statement and instruction sheet informing you how to fill out same, which you should fill out and return all three copies to this office at once.

Yours very truly,

WILLIAM J. BOWMAN,
Area Rent Director-Attorney.

WJB:rs.

Enc.

CC: Mr. Henry J. Zetzer, Regional Rent Attorney.

Defendant's Exhibit A

Date: 7-28-44.

This is a limited agency contract between Charles Locke, hereafter known as the party of the first part, and Charles Stone, hereafter known as the party of the second part.

The party of the first part hereby gives the party of the second part the right to act as the agent for the party of the first part

in securing for the party of the first part suitable living quarters at Toledo, Ohio. It is understood that the party of the second part will act in his own name, but for the account of the party of the first part. The party of the first part agrees to pay the party of the second part at the rate of Seventy-five dollars a month (\$75.00) starting August first. The payment of (\$75.00) shall be in the hands of the party of the second part on or before the first day of each month to cover that calendar month in advance. These funds are to be used by the party of the second part to pay rent on quarters obtained.

The party of the second part agrees not to act beyond his rights as granted under this instrument.

This contract is cancellable by either party on thirty days notice which is to be given on the first day of the month.

Signed at Indianapolis, Indiana. Date: 7-28-44

Party of the first part:

C. F. A. LOCKE.

Party of the second part:

C. W. STONE.

Defendant's Exhibit B

Registered Mail.

Receipt No. 7841-1-16-45.

TOLEDO, OHIO,
January 16, 1945.

O. P. A. AREA RENT CONTROL OFFICE,
Columbus, Indiana.

GENTLEMEN: I am enclosing copy of contract concerning my property at Mooresville, Indiana, which is more or less self explanatory. Last summer I was temporarily transferred to Toledo and up until that time I had lived in the house seven years.

At the time contract was made my attorney advised me that this loan did not conflict with the rent control laws. It is not my intention to break any laws and to make sure is the reason I am sending copy of contract. Will appreciate your advising me if this is not in order.

Yours very truly,

C. W. STONE,
P. O. Box No. 296, Toledo, Ohio.

30

Defendant's Exhibit C

Date: 9-30-44.

This is supplement No. 1 to contract between Charles Locke and Charles Stone of July 29, 1944, correcting the following words.

In the sixth line delete (3324 Island Avenue) and add in their place (2506 Scottwood).

Party of the first part:

C. F. A. LOCKE.

Party of the second part:

C. W. STONE.

Defendant's Exhibit D

ENVELOPE

COLUMBUS, IND.,

Jan. 18, 1945, 9 P. M.

Office of Price Administration, Area Rent Office, 633 Washington Street, Columbus, Indiana.

Official Business.

C. W. STONE,

P. O. Box No. 296,

Toledo, Ohio.

Defendant's Exhibit D-1

RENT REGULATION FOR HOUSING

Section 6

Removal of Tenant

(a) Restrictions on removal of tenant. So long as the tenant continues to pay the rent to which the landlord is entitled, no tenant shall be removed from any housing accommodations, by action to evict or to recover possession, by exclusion from possession, or otherwise, nor shall any person attempt such removal or exclusion from possession, notwithstanding that such tenant has no lease or that his lease or other rental agreement has expired or otherwise terminated, and regardless of any contract, lease, agreement or obligation heretofore or hereafter entered into which provides for entry of judgment upon the tenant's confession for breach of the covenants thereof or which otherwise provides contrary hereto, unless:

(1) Tenant's refusal to renew lease. The tenant who had a written lease or other written rental agreement, has refused upon demand of the landlord to execute a written extension or renewal thereof for a further term of like duration but not in excess of one year but otherwise on the same terms and conditions as the previous lease or agreement, except insofar as such terms and conditions are inconsistent with this regulation; or

(2) Tenant's refusal of access to landlord. The tenant has unreasonably refused the landlord access to the housing accommo-

dations for the purpose of inspection or of showing the accommodations to a prospective purchaser, mortgagee, or prospective mortgagee, or other person having a legitimate interest therein: Provided, however, That such refusal shall not be ground for removal or eviction if such inspection or showing of the accommodations is contrary to the provision of the tenant's lease or other rental agreement; or

(3) Violating obligation of tenancy or committing nuisance.—The tenant (i) has violated a substantial obligation of his tenancy, other than an obligation to pay rent, and has continued, or
32 failed to cure, such violation after written notice by the landlord that the violation cease, or (ii) is committing or permitting a nuisance or is using or permitting a use of the housing accommodations for an immoral or illegal purpose; or

(4) Subtenants on expiration of tenant's lease.—The tenant's lease or other rental agreement has expired or otherwise terminated, and at the time of termination the occupants of the housing accommodations are subtenants or other persons who occupied under a rental agreement with the tenant, and no part of the accommodations is used by the tenant as his own dwelling; or

(5) Demolition or alteration by landlord.—The landlord seeks in good faith to recover possession for the immediate purpose of demolishing the housing accommodations or of substantially altering or remodeling it in a manner which cannot practicably be done with the tenant in occupancy and the plans for such alteration or remodeling have been approved by the proper authorities, if such approval is required by local law; or

(6) Occupancy by landlord.—The landlord owned, or acquired an enforceable right to buy or the right to possession of, the housing accommodations prior to the effective date of regulation (or prior to October 20, 1942 where the effective date of regulation is prior to that date) and seeks in good faith to recover possession of such accommodations for immediate use and occupancy as a dwelling for himself. If a tenant has been removed or evicted under this paragraph (a) (6) from housing accommodations, the landlord shall file a written report on a form provided therefor before renting the accommodations or any part thereof during a period of six months after such removal or eviction.

(b) Administrator's certificate.—(1) Removals not inconsistent with Act or regulation.—No tenant shall be removed or evicted on grounds other than those stated above unless, on petition of the landlord, the Administrator certifies that the landlord may
33 pursue his remedies in accordance with the requirements of the local law. The Administrator shall so certify if the landlord establishes that removals or evictions of the character proposed are not inconsistent with the purposes of the Act

or this regulation and would not be likely to result in the circumvention or evasion thereof.

(2) **Occupancy by purchaser.**—A certificate shall be issued authorizing the pursuit of local remedies to remove or evict a tenant of the vendor for occupancy by a purchaser who has acquired his rights in the housing accommodations on or after the effective date of regulation (or on or after October 20, 1942 where the effective date of the regulation is prior to that date) only as provided in this paragraph (b) (2).

(i) Where the Administrator finds that the payment or payments of principle made by the purchaser aggregate twenty percent or more of the purchase price, he shall, on petition of either the vendor or purchaser, issue a certificate authorizing the vendor or purchaser to pursue his remedies for removal or eviction of the tenant in accordance with the requirements of the local law. Except as hereinafter provided, the certificate shall authorize pursuit of local remedies at the expiration of three months after the date of filing of the petition.

The payment or payments of principle may be made by the purchaser conditionally or in escrow to the end that they shall be returned to the purchaser in the event the Administrator denies a petition for a certificate.

Any payments of principle made from funds borrowed for the purpose of making such payments shall be excluded in determining whether twenty percent of the purchase price has been paid, unless the Administrator finds that the loan is made in good faith and not for the purpose of circumventing or evading the provisions of this paragraph (b) (2).

Where property other than the housing accommodations which are the subject of the purchase is mortgaged or pledged to the vendor to secure any unpaid balance of the purchase price, the payment requirement shall be deemed satisfied if the value of such security, plus any payments of principal made from funds not borrowed for the purpose of making such principal payments, equal twenty percent or more of the purchase price.

(ii) Where the Administrator finds (a) that equivalent accommodations are available for rent into which the tenant can move without substantial hardship or loss, or (b) that the vendor has or had a substantial necessity requiring the sale and that a reasonable sale or disposition of the accommodations could not be made without the removal or eviction of the tenant, or (c) that other special hardship would result, a certificate may be issued although less than twenty percent of the purchase price has been paid and may authorize the vendor or purchaser to pur-

sue his remedies for removal or eviction of the tenant at a time less than three months after the date of filing the petition.

(c) Exceptions from section 6—(1), Subtenants.—The provisions of this section do not apply to a subtenant or other person who occupied under a rental agreement with the tenant, where removal or eviction of the subtenant or other such occupant is sought by the landlord of the tenant, unless under the local law there is a tenancy relationship between the landlord and the subtenant or other such occupant.

(2) Housing subject to rent schedule of War or Navy Department.—The provisions of this section shall not apply to housing accommodations rented to either Army or Navy personnel, including civilian employees of the War and Navy Departments, for which the rent is fixed by the national rent schedule of the War or Navy Department.

(3) One or two occupants in landlord's residence.—The provisions of this section shall not apply to an occupant of a furnished room or rooms not constituting an apartment, located within the residence occupied by the landlord or his immediate family, where such landlord rents to not more than two occupants within such residence.

35 (4) Renting to family in landlord's residence.—The provisions of this section shall not apply to a family which on or after August 1, 1943 moves into a furnished room or rooms not constituting an apartment, located within the residence occupied by the landlord or his immediate family, where such landlord does not rent to any persons within such residence other than those in the one family.

(d) Notices required—(1) Notices prior to action to remove tenant.—Every notice to a tenant to vacate or surrender possession of housing accommodations shall state the ground under this section upon which the landlord relies for removal or eviction of the tenant. A written copy of such notice shall be given to the area rent office within 24 hours after the notice is given to the tenant.

No tenant shall be removed or evicted from housing accommodations by court process or otherwise, unless at least ten days (or, where the ground for removal or eviction is non-payment of rent, the period required by the local law for notice prior to the commencement of an action for removal or eviction in such cases, but in no event less than three days) prior to the time specified for surrender or possession and to the commencement of any action for removal or eviction, the landlord has given written notices of the proposed removal or eviction to the tenant and to the area rent office, stating the ground under this section upon which

such removal or eviction is sought and specifying the time when the tenant is required to surrender possession.

Where the ground for removal or eviction of a tenant is non-payment of rent, every notice under this paragraph (d) (1) shall state the rent for the housing accommodations, the amount of rent due and the rental period or periods for which such rent is due. The provisions of this paragraph (d) (1) shall not apply where a certificate has been issued by the Administrator pursuant to the provisions of paragraph (b) of this section.

(2) Notices at time of commencing action to remove tenant.—

At the time of commencing any action to remove or evict a tenant, including an action based upon nonpayment of rent, the landlord shall give written notice thereof to the Area Rent Office stating the title of the case, the number of the case where that is possible, the court in which it is filed, the name and address of the tenant, and the ground under this section on which removal or eviction is sought.

(e) Local Law.—No provision of this section shall be construed to authorize the removal of a tenant unless such removal is authorized under the local law.

Defendant's Exhibit D-2

OPA FORM D-301.

QUESTIONS AND ANSWERS ON FEDERAL RENT CONTROL

OPA

United States of America

Office of Price Administration

Washington, D. C.

JANUARY 1944.

QUESTIONS AND ANSWERS ON FEDERAL RENT CONTROL

Because rent is the second largest item in the cost of living, high rents and threats of eviction contribute to labor turn-over and discontent. Federal rent control, as provided for in the Emergency Price Control Act of 1942, tends to eliminate these conditions and contributes to production. It is a major part of price control operating to prevent inflation.

Below are listed most of the pertinent currently asked questions on Rent Control with the answers. If the particular question you wish answered is not shown here, send the written question to the Area Rent Office nearest you.

WHAT RENTS ARE CONTROLLED

Congress has authorized the Federal Government to control rents in Defense-Rental Areas for all rental housing—wherever people live and pay rent. Two types of Regulations have been issued by the OPA. The Housing Regulation applies to houses, apartments, flats, and tenements. The Hotel and Rooming House Regulation applies to all rooms in hotels, boarding or rooming houses, and to auto and trailer camps. If a landlord is in doubt as to which Regulation applies to his particular property, he should call at the Area Rent Office.

1. Q. Does rent control apply to a dwelling on a farm?

A. No; if the tenant is working on the farm most of his time.

2. Q. Can a farm house be rented separately from the land?

A. Yes; and is then under rent control.

3. Q. Is there any control over commercial rents?

A. No. The Emergency Price Control Act does not apply to commercial rents.

4. Q. In what way is a combination store and dwelling affected by rent control?

A. The answer depends generally on the following facts:

(1) If the arrangement of the store and dwelling is such that separate tenants could occupy the store and dwelling, the dwelling portion only is subject to rent control.

(2) If the property cannot be so separated and the greater part is used commercially, then the entire property is free from rent control.

(3) If the property cannot be separated, and the greater part is used for a dwelling, then the whole unit is subject to the Rent Regulation, unless the rental value of the store is clearly in excess of the rental value of the dwelling.

SETTING MAXIMUM RENTS BY DATES

In fixing the rent ceiling, the Government does not attempt the task of inspecting the living quarters of each of our country's 16 million rent-paying families in setting a maximum rent for each place. Instead, the Price Administrator selects a maximum rent date for rent control areas and directs that, as a general principle, rents must not exceed the rents in effect on that date.

5. Q. How is the maximum rent date determined and what do you base rental values on?

A. The Rent Regulation does not fix rents on value; rather, we follow the method authorized by Congress and operate on the principle of the maximum rent date. This attempts to stabilize

rents as they were fixed by landlords and tenants in normal times. The area rent office will tell you the maximum rent date for your area.

REGISTRATION OF DWELLINGS

In order to protect both the landlord and the tenant and to find out the rent on the maximum rent date, the Rent Regulations provide generally that all rented premises be registered.

6. How does the tenant know what the maximum rent is?

A. Under the Rent Regulation a landlord must file a registration statement with the Area Rent Office, and copy is sent to the tenant.

7. Q. What kind of living quarters are to be registered under the Regulations?

A. All property rented or offered for rent for dwelling purposes. (See Questions 1 and 4 for some of the exceptions.)

8. Q. What is the penalty for not registering housing?

A. The penalties provided in the Emergency Price Control Act are fines up to \$5,000 or one year's imprisonment or both.

39 9. Q. Must a tenant who subrents also file a registration statement?

A. Yes.

10. Q. I sometimes rent out a room on special occasions. Must I register?

A. Yes.

11. Q. I am a new tenant and have never seen a copy of the registration statement. How can I find out what my rent is and what services it includes?

A. If your landlord does not have a copy of the registration, you may get the information at the Area Rent Office.

CHANGE OF TENANCY

12. Q. Must the landlord register again when he gets a new tenant?

A. No, but he must file with the Area Rent Office a "Notice of Change in Tenancy" and he must secure the tenant's signature on the "Notice of Change in Tenancy," which indicates the maximum rent.

13. Q. Why is it necessary to file change in tenancy?

A. To assure new tenants that they do not pay more than the maximum rent.

14. Q. When one tenant moves out, may I charge the next tenant a higher rent?

A. Not if the higher rent is more than the maximum rent.

15. Q. What happens to a landlord if he is late in filing change of tenancy?

A. Failure to file the change in tenancy form within 5 days places the landlord in violation of the Rent Regulation and subject to its penalties.

HOW CAN A LANDLORD RAISE HIS RENTS?

In certain cases the Rent Regulations permit adjustment of maximum rents where conditions have changed since the maximum rent date. The grounds on which the Rent Director may raise the maximum rent are limited.

40 It should be noted that landlords must petition the Rent Director on forms provided for this purpose and must secure an order approving an adjustment in rent before collecting the new rent.

16. Q. Upon what grounds may a landlord apply for an increase in rent?

A. The landlord may petition to raise his rents on the following grounds:

(1) Substantial alterations to the premises, by a major capital improvement.

(2) Substantial increase in services or furnishings.

(3) Rents based on personal or special relationships between the landlord and tenant, where the rent on the maximum rent date was substantially lower than comparable rents in the area. :

(4) In some cases where there has been an increase in the number of occupants of the property.

(5) In some cases where special leases call for different monthly rents during the lease..

(6) Where the terms of the lease in force on the maximum rent date began more than one year before that date and provided rents substantially lower than comparable rents in the area.

(7) In some cases where the premises are rented on a seasonal basis, such as resort areas.

(8) Where the property was temporarily exempt from real estate taxes on the maximum rent date and the landlord passed the benefit of this tax exemption on to the tenant by giving a rent substantially lower than comparable rents in the area.

17. Q. How can I increase the maximum rent on my property?

41 A. If you can qualify under one of the grounds mentioned above, you must petition the Area Rent Office and get a higher rent approved by the Rent Director before you can charge more rent.

18. Q. If a landlord believes his rent is too low, how can he get it raised?

A. If he can qualify under one of the grounds mentioned above, he may petition the Area Rent Office for an increase.

19. Q. The rent which I am charging for my housing is less than my neighbor charges and why can't I charge what he does?

A. The Rent Regulation does not attempt to equalize rents which were collected on the maximum rent date. It attempts to hold them at the levels that were established by landlords themselves in normal times.

20. Q. I have three identical apartments. Two rent at \$40, one at \$35. Can I raise the rent on the third to equalize?

A. No; because these rents were not equal on the maximum rent date.

21. Q. My tenant says that my apartment is worth more than he is paying—can I collect more rent since it is all right with the tenant?

A. No. To accept more than the maximum rent, even though the tenant agreed to pay it, would be a violation of the Regulation.

22. Q. May I raise my rent because the tenant is making higher wages?

A. No. This is not one of the grounds upon which an increase may be granted.

MAJOR CAPITAL IMPROVEMENT

23. Q. What constitutes a major capital improvement?

42 A. A major capital improvement which substantially increases the rental value of the premises and for which improvement the landlord may petition for an increase in rent, will fall into one of the following:

(1) A structural addition. This is a clear addition to the premises such as the building of an additional room or the installation of plumbing, heating, or electricity where such equipment did not previously exist.

(2) A structural betterment, such as the modernization of an existing bathroom or kitchen or the replacing of a very old heating system with a more modern heating plant.

(3) A complete rehabilitation. Taken all together, this is a general improvement and reconditioning such as would place the property in a higher rental range. This is a general overhauling of the premises and not ordinary upkeep.

24. Q. If a furnace is replaced, can the rent be increased?

A. This is to be determined by the facts of the case. If the new furnace is the type that would have brought a higher rent on the maximum rent date by definitely improving the heating

system so that the premises are more desirable now, then the Rent Director may approve a higher rent.

25. Q. Can the landlord obtain an increase in rent if the tenant uses more utilities such as gas and electricity than were used on the maximum rent date?

A. Usually in such cases where adjustments are granted it will be because an increase in the use of such services results from increased occupancy.

26. Q. If the premises have been redecorated, can the rent be raised?

43 This is to be determined from the facts in each particular case. If the landlord furnished decoration on the maximum rent date, he is not entitled to an increase in rent. However, if the landlord was not supplying decoration on the maximum rent date and he has now redecorated the premises he may petition for an increase in rent.

27. Q. I am now going to furnish my apartment which was not previously rented furnished. May I charge more rent?

A. Yes, you may set your own first rent and must within 30 days register the property at the Area Rent Office. The Rent Director may reduce this rent if he finds it to be higher than the prevailing rent for similar furnished premises on the maximum rent date. You may, if you wish, ask the Rent Director's opinion of a proper rent before renting.

28. Q. If landlord is renting furnished rooms and later adds kitchen privileges, can he get an increase in rent for these additional privileges?

A. Yes; if the privileges given to the tenant amount to a substantial increase in services, the landlord may file a petition with the Area Rent Office for a rent increase.

SPECIAL RELATIONSHIPS

29. Q. If on the maximum rent date the occupant was a blood relation, can I increase the rent on a new tenant?

A. In such a case if the rent was substantially lower than the rent charged for similar premises on the maximum rent date because of the blood relationship, you may petition the Area Rent Office for a rent increase.

30. Q. On the maximum rent date my tenant had been with me for a long time on a month-to-month basis. I was satisfied with him and I had not raised his rent. Can I increase the rent on a new tenant?

44 A. No; this is not a ground for an increase under the new Rent Regulation.

31. Q. My tenant had an accident and he was in the hospital on the maximum rent date. His wife and two children remained on the premises and I reduced the rent from \$50 to \$35 because I was sorry for them. My tenant has recovered and is able and willing to pay the regular rent of \$50. May I raise his rent?

A. In such a case you may file a petition in the Area Rent Office for a rent increase, and an increase may be granted if the \$35 rent on the maximum rent date was lower than comparable rents.

SEASONAL RENTS

32. Q. For five years my landlord charged me \$40 per month in winter and \$35 in summer. The maximum rent date is in winter. He has refused to lower my rent during summer. Must the landlord reduce the rent in summer?

A. The tenant may file an application for a decrease in the rent during the summer months. Until an order of the Rent Director is issued reducing the rent, the rent is \$40 per month.

INCREASED OCCUPANCY

33. Q. Can an increase be granted in the rent if more people are living in the house or other dwelling than were living there on the maximum rent date?

A. The landlord may petition for an increase in rent only if:

(1) An increase in the number of occupants over the number provided in the rental agreement on the maximum rent date and the landlord had a definite practice of fixing different rents for different numbers of occupants, or

45 (2) There has been an increase in the number of occupants because the tenant is subletting to more people than he was on the maximum rent date, or

(3) If the present number of occupants is more than would ordinarily live in that type of dwelling.

34. Q. When the tenant moved in there were three people in the family and now they have a baby. Can I collect more rent?

A. Generally no.

35. Q. Can I have my brother and wife, war workers, live with me without the consent of my landlord?

A. This would depend upon your rental agreement with the landlord or the provisions of the local law.

LEASES

Two classes in an ordinary lease are affected by the Rent Regulations. One of these is the amount of rent payment. Even

though this clause provides for a higher rent than that fixed by the Rent Regulation, the landlord may not demand or receive this higher amount. The other is the "vacating" clause contained in leases under which the tenant agrees to surrender his premises at the end of the lease. Under the Rent Regulation this clause is also no longer in force.

36. Q. May the landlord evict me if I refuse to sign a renewal of my lease on the same terms and conditions?

A. Yes; but the landlord may not demand a renewal for more than one year, and the lease must not contain provisions in violation of the Rent Regulation.

37. Q. If the Rent Regulation changes the rent provided in a lease, why doesn't the Regulation cancel the entire lease?

A. Rent control in wartime is intended to stabilize rents and protect the occupancy of tenants. The Regulations are not intended to void leases or change the ordinary rental practices between landlords and tenants that existed before the war.

38. Q. My landlord refuses to renew my lease. Should I insist on a lease or am I protected without it?

A. The Rent Regulations do not compel landlords to renew expiring leases. However, a tenant may not be evicted or charged more than the maximum rent simply because he does not have a lease.

FIRST RENTS

39. Q. How much can I charge for premises which are now being rented for the first time and what must I do to comply with the Rent Regulation?

A. The landlord may set his own rent. He must, within 30 days, register this property with the Area Rent Office. The Rent Director may reduce this rent if it is higher than the prevailing rate for similar premises on the maximum rent date.

40. Q. Can the Rent Office approve the rent before the premises are rented for the first time?

A. Yes; if a landlord requests it, a Rent Director may give a prior opinion before the premises are first rented. However, a landlord does not need to get the Rent Director's approval before renting the premises for the first time. The Regulation does give the Rent Director the authority to reduce a first rent if it is higher than prevailing rent for similar premises on the maximum rent date.

SERVICES AND REPAIRS

Generally the maintenance of services and repairs provided by the landlord on the maximum rent date are controlled by the Rent

Regulation. If your services have been substantially reduced, your Rent Director may reduce the rent.

47 41. Q. Does the landlord have to provide the same services now as he did on the maximum rent date?

A. Yes; as to essential services, such as heat, light, gas, etc. However, the scarcity of help and materials due to the war affects this situation and nonessential services, therefore, can be expected to be reduced to some extent without warranting a decrease in rent.

42. Q. I want to sublet my apartment furnished. How much can I charge for it?

A. If this apartment has never been rented furnished before, you may set your own rent. You must then register this property, within 30 days, with the Area Rent Office and the Rent Director may reduce the rent if it is higher than prevailing rent for similar premises on the maximum rent date.

43. Q. I am now paying the water, gas, and electricity bills, and I would like to have the tenant pay for them. Can I do this?

A. Before you can make this change, you must petition the Area Rent Office for and secure permission. The Rent Director in these cases is authorized to order a reduction in rent. However, when the property becomes vacant, the landlord may make such changes before renting to a new tenant, but he must notify the Area Rent Office of these changes within ten days.

44. Q. My landlord says he cannot secure replacement parts for refrigerator and other mechanical equipment. Can I get a decrease in rent?

A. You may file an application with the Area Rent Office for a decrease in rent. Within ten days of a decrease in such services, the landlord must petition the Area Rent Office for approval of such decrease, and the Area Rent Office may order a decrease in rent if the decrease in services is substantial.

48 45. Q. I rented my property furnished and now I want to rent it to the same tenant unfurnished.

A. You should immediately file a petition with the Area Rent Office, requesting permission to remove the furniture.

46. Q. I am renting my house with garage for \$30 per month. My tenant does not have an automobile. Can I rent my garage to someone else?

A. You must first petition the Area Rent Office and obtain permission to eliminate the garage service you are now providing the tenant.

47. Q. What procedure should be followed to compel a landlord to make essential repairs which he has refused to make?

A. Tenant should report this to the Area Rent Office.

EVICTION OF TENANTS

Evictions are controlled to some extent by the Emergency Price Control Act and the Rent Regulations. The Rent Regulations specify certain grounds on which a tenant may be evicted by action filed directly in the local court. In these cases the landlord is only required to give the tenant and the area office certain notices of the action. In other cases the landlord must obtain a certificate from the area office before he can bring an eviction action. This certificate is not an order for eviction of the tenant, but simply an authorization to the landlord to pursue his normal eviction remedies in the local court.

48. Q. Upon what grounds may a landlord evict his tenant by action filed directly in the local court?

A. There are various circumstances whereby a tenant may be so evicted. They are:

(1) If the tenant refuses to renew his lease upon the same terms and conditions as in his expiring lease. This is a ground for eviction only where the renewal lease is for a term not longer than one year and contains no provisions contrary to the Rent Regulation.

49 (2) Where the tenant unreasonably refuses to allow his landlord access to the premises for the purpose of inspection or to show to a prospective purchaser. Such refusal is not a ground for eviction, however, if the inspection of the premises is contrary to the tenant's lease.

(3) Violation of a substantial obligation of his rental agreement, such as maintaining a fire hazard on the premises. However, the landlord must first give the tenant written notice to cease such violation.

(4) Committing a nuisance or using the dwelling unit for immoral or illegal purposes.

(5) Where the landlord wishes to do extensive remodeling or alteration which cannot be done while the tenant is occupying the property.

(6) When the landlord wants to use the dwelling for himself, provided he owned the property before rent control went into effect in the area. (However, where rent control went into effect before October 20, 1942, the landlord may not evict without securing a Certificate Relating to Eviction, unless he owned the property before October 20, 1942.)

(7) Where he fails to pay his legal rent.

(8) Where the tenant's lease has expired and at its expiration is subletting and is not occupying any portion of the dwelling himself.

49. Q. Must a landlord secure the permission of the Area Rent

Office in all cases of eviction before taking steps in a local court to evict a tenant?

A. For any other type of eviction except the eight listed above, he must secure permission from the Area Rent Office. However, the landlord must notify the Area Rent Office of all eviction actions.

50. Q. Can I purchase a home now occupied by a tenant and get possession of it for my own use?

A. The tenant in occupancy has certain rights under the Rent Regulation. Apply to your Area Rent Office for details.

51. Q. How long must a new purchaser wait before he can obtain possession of the property for his own occupancy—and is the tenant required to pay rent during that period? Also, are there any requirements as to the amount of the down payment?

A. In general, eviction is permitted only where the down payment is at least 20% of the purchase price and the buyer must wait three months from the date the eviction certificate is issued by the Area Rent Office unless:

(1) There are other similar premises into which the tenant can move without causing him a substantial hardship or loss.

(2) The owner had a real necessity requiring the sale such as a court's order to sell the property and reasonable sale could not be made without removal of the tenant.

If either of these circumstances is true, the Rent Director may issue an eviction certificate effective immediately.

The tenant must continue to pay rent to the purchaser during the three months waiting period.

52. My landlord has notified me to vacate. Can he force me to move out though I am unable to find living accommodations, and if so, how much notice am I entitled to?

A. The Rent Regulation may prevent your eviction unless the landlord has a clear right to evict you as explained in Questions 48 and 49. In any case, you would generally have ten days under the Rent Regulation in which to move and the local court, not the Area Rent Office, must order the eviction.

53. Q. My tenants are very undesirable and I consider them a nuisance. How can I evict them?

A. That is a matter for the local court to decide.

54. Q. Can a landlord evict if a tenant is a defense worker or if tenants are the family of a member of the armed forces?

A. Yes; if the landlord has a ground for eviction. The Rent Regulation makes no distinction between tenants, its provisions applying equally to all.

55. Q. Can a landlord re-rent accommodations after evicting a tenant?

A. Yes. However, if the landlord has evicted the tenant to occupy the property himself, he must file a report with the Area Rent Office before re-renting if he re-rents within six months.

56. Q. Can a landlord evict a tenant solely because the tenant refuses to pay more than the maximum rent?

A. No. This would be a violation of the Rent Regulation.

57. Q. If a tenant is behind in his rent but pays it immediately after he receives a notice of eviction, may the landlord proceed to evict him?

A. That is a matter for the local courts to decide.

58. Q. If we have rented or rent our farm tenant house to a war worker, can we get possession if we later need it for a farm tenant worker?

A. The answer depends upon the particular facts in every case. Before you could evict the tenant occupying the farm-tenant house you must petition the Area Rent Office for an eviction certificate.

52

HOTEL REGULATIONS

59. Q. Can I secure a room in a hotel on a monthly rate?

A. The answer depends upon the particular facts in every case. Generally, if the hotel regularly rented rooms on a monthly basis, it must continue to rent the same number of rooms on this basis. The Area Rent Office will be able to give you specific information on this.

60. Q. If I am a monthly guest in a hotel, can I be forced to vacate to make rooms available for transient guests?

A. If you are a monthly guest in a hotel, you may not be evicted to make the room available for transient guests.

61. Q. Must the operator of a rooming house, boarding house or hotel generally maintain a record of the amount charged for each unit within the structure?

A. Yes. The landlord must preserve for and make available to the Area Rent Office upon request all records relating to rent.

62. Q. Does the Hotel Regulation require a hotel to give any specific notice to a guest in order to evict him?

A. No. However, except in nonpayment of rent cases, the hotel must give the Area Rent Office a written notice at the time of commencing an eviction action.

PUBLIC AND PRIORITY HOUSING

63. Q. Is it true that various public housing and priority built homes are permitted to rent at a higher rate than comparable housing units that are privately owned?

A. Housing built with priorities costs more now and this is considered in fixing rents for such housing. However, public housing is not permitted to rent at a higher rate than similar property was renting for on the maximum rent date. Rent increases are allowed in some low rent public housing projects because they were rented at a time when the tenant's income was unusually low, and the rent was subsidized by the government. Better employment opportunities now enable these tenants to pay higher rent and thus relieve the government of making up the difference.

REFUNDS

64. Q. If a tenant having paid in advance moves out during the middle of the month, is the landlord required to refund the unused portion of the rent?

A. This is a question to be determined in accordance with local law and is not a matter for the Area Rent Office to handle.

65. Q. I have overcharged my tenant for three months. Must I refund the overcharge?

A. Yes. Under the Emergency Price Control Act of 1942 tenants may sue in the local court for three times the overcharge.

66. Q. If Army personnel or defense workers subject to transfer at any time pay rent in advance, can they get a refund?

A. The answer is the same as to Question 64 above. This is a question to be determined in accordance with local law and is not a matter for the Area Rent Office to handle.

INCREASED COSTS

67. Q. Since the cost of maintenance, repairs, services, etc., are said to be much higher than when my rents were fixed, why can't I raise my rents to compensate this?

A. Comprehensive surveys show that most landlords have been able to hold down their actual expenditures through economies of wartime operation. Also the income from rental properties has increased because of higher occupancy. Comparatively few houses and apartments are vacant, and landlords are not losing as much money by failure to collect rents. As a result the great majority of landlords, OPA surveys show, have a larger income after meeting their operating expenses than in pre-rent control years.

HEAT

69. Q. If the landlord is obligated to furnish heat, what temperature must he maintain in winter and on what day must it begin?

A. The temperature and day the landlord must begin supplying heat to his tenant are to be determined in accordance with the local law or practice.

70. Q. My landlord furnished heat last winter. Now he refuses to do so. What can I do?

A. You should notify the Area Rent Office as this is a violation of the Rent Regulation.

71. Q. My landlord has installed a new heater to replace the defective heater. Can he increase my rent?

A. If the new heater is merely a replacement, the landlord would not be entitled to an increase in rent.

OTHER QUESTIONS

72. Q. Why can't the tenant appeal a Rent Director's decision just as a landlord can?

A. The Emergency Price Control Act and the rent regulations prohibit or require action only on the part of landlords and impose no restrictions upon tenants. Accordingly only landlords have been given a right of appeal.

73. Q. If the Area Rent Office denies a request for an increase in rent, how does the landlord get the case reopened?

55. A. The landlord may, within 60 days after an order has been issued denying his petition for an increase in rent, file with the Rent Director an "Application for Review," Form D-9. This application for review will be passed on by the Regional OPA Office.

74. Q. Do I have to pay the rent if the landlord won't give me a receipt?

A. No.

75. Q. My landlord hasn't called for the rent. What shall I do?

A. The Rent Regulation does not protect a tenant from eviction if he does not pay his landlord the rent when it is due. The manner in which it is paid is to be determined by the provisions of the tenant's lease or agreement or custom or provisions of local law.

76. Q. I want to rent out all the rooms in my apartment as sleeping rooms only. Can I do this?

A. Generally, if your apartment is vacant, you may rent out rooms for sleeping purposes only. However, you must register under the Hotel and Rooming House Regulation and you are subject to its provisions if you rent to more than two paying tenants.

77. Q. If the Rent Director grants me a rent increase when may I begin collecting it?

A. The landlord is permitted to collect the increase from the date of the Rent Director's order granting the increase.

78. Q. Do I have to refund to the tenant overcharges in rent received between the maximum rent date and the date the Rent Regulation went into effect?

A. No.

79. Q. If my tenant moves owing me rent, do you collect it for me?

56 A. No. This is not a matter for the Area Rent Office to handle.

80. Q. Can a landlord present an outgoing tenant with a bill for damages done by tenant?

A. This is not a matter for the Area Rent Office to handle.

Copies of the Rent Regulations referred to in this pamphlet may be obtained from your local Area Rent Office.

Defendant's Exhibit E

MINNEAPOLIS-HONEYWELL REGULATOR COMPANY

M H CONTROL SYSTEMS—BROWN INSTRUMENTS

1007 N. Meridian St.—Telephone Riley 4405—Indianapolis 4, Ind.

C. F. A. LOCKE, Branch Mgr.

JANUARY 23, 1945.

Mr. CHARLES W. STONE,

c/o W. H. Edgar and Son, Inc.,
110 Ottawa Street, Toledo, Ohio.

MY DEAR MR. STONE: This letter is to notify you of the cancellation of the limited agency contract between ourselves, dated July 28, 1944, and also to notify you of the cancellation of the contract dated July 29, 1944, together with the supplement thereto dated September 30, covering the loaning to each other of property now in each other's possession.

Very truly yours,
cfal/amm.

(S) C. F. A. LOCKE.

57

Defendant's Exhibit F

OFFICE OF PRICE ADMINISTRATION, AREA RENT OFFICE

833 Washington Street

COLUMBUS, INDIANA

JUNE 11, 1945.

Mr. C. W. STONE,

P. O. Box 296, Toledo, Ohio.

DEAR SIR: This is with reference to the property you formerly owned at 148 W. Washington St., Mooresville, Ind., and which was occupied by one Mr. Charles W. Locke.

In January of this year we received from you, a letter with a contract attached regarding the rental agreement on this property, and we in turn mailed you copy of the Rent Regulations.

An investigation reveals that you have been collecting a cash rent of \$75.00 per month for this house, and if this is true, you are required to register this property with the Area Rent Office. This should have been filed with this office within 30 days of first renting, so we must request that you file same within the next five days. Registration blank is attached.

Very truly yours,

(S) WILLIAM J. BOWMAN,
Area Rent Director.

58

Defendant's Exhibit G

OFFICE OF PRICE ADMINISTRATION

UNITED STATES OF AMERICA

AREA RENT OFFICE

633 Washington Street

COLUMBUS, INDIANA

NOTICE OF PROCEEDINGS BY RENT DIRECTOR

Concerning (Description of Accommodations): 148 West Washington Street, Mooresville, Indiana. Docket No. 20,691.

To (Name and Address of Landlord): Charles W. Stone, Box 296, Toledo, Ohio.

In accordance with Section 5 (d) of the Rent Regulation the Rent Director has after due consideration determined that the above described dwelling accommodations were "first rented" on August 1, 1944 to C. F. A. Locke and the Rent Director further finds that the rent on that date was \$75.00 per month.

A preliminary investigation indicates that the maximum rent for the above described accommodations should be decreased on the ground stated in Section 5 (c) (1) of the Rent Regulation. Therefore, the Rent Director proposes to decrease the maximum rent from \$75.00 per month to \$45.00 per month effective August 1, 1944, the date of the first renting thereof, pursuant to Sections 4 (e) and 5 (c) (1). In the event you wish to file objections to the proposed action, such objections must be filed within five days from the date of this notice.

Written evidence supporting your objections must also be filed. Your objections and supporting evidence should be typed or legibly written. The address of the above housing accommoda-

tions and the docket number appearing on this notice should be placed on each document filed. If no objections and supporting evidence are filed within the above period, the Rent Director may enter an order decreasing the maximum rent without further notice.

The landlord has failed to file a registration statement within the time specified in Section 4 (e) of the Regulation, and in such cases the Regulation provides that the order of the Rent Director under section 5 (c) (1) shall be effective to decrease the maximum rent from the date of such first renting or from the beginning of the first rental period on or after October 1, 1943, or the effective date of the Regulation, whichever is the later, unless the Administrator finds that the landlord was not at fault in failing to file a proper registration statement within the time specified.

The Rent Director further finds that the landlord was required by Section 7 to file a registration statement within thirty days from the time of the first renting. And alleges that he did not so register because he was advised by his attorney that "this loan would not conflict with the Rent Control laws" the Rent Director therefore finds that the evidence submitted by the landlord does not constitute sufficient evidence to establish that the landlord was not "at fault" within the meaning of Section 4 (e) for such failure so to file such registration statement.

June 21, 1945.

(S) WILLIAM J. BOWMAN,
Rent Director.

CC: William H. Henley, 227 West Main Street, Mooresville, Indiana.

60

Defendant's Exhibit II

JUNE 23, 1945.

Mr. WM. J. BROWN,
Rent Director, Area Rent Office,
633 Washington St., Columbus, Indiana.

DEAR SIR: Acknowledging receipt of your Notice of Proceedings by Rent Director, Docket No. 20691, concerning property formerly owned by me at 148 W. Washington St., Mooresville, Indiana, I hereby protest your action in this matter based on the following reasons:

1. This property has never been rented.
2. The use of the property in question was traded to Mr. Locke for the use of property at 2506 Scottwood, Toledo, Ohio.

This exchange, I do not believe, is in violation of any rent regulations. The Toledo Rent Office advised me, in August of last

year, that this exchange did not concern their office. I later mailed your office a copy of the contract between myself and Mr. Locke and your action in mailing me a copy of the Rent Regulations and not protesting at that time, I feel gave tentative approval. I would appreciate it if you could advise me just what part of the Rent Regulations was violated by this exchange.

If you must concern yourself with this contract, which we do not believe is under the jurisdiction of your office, please advise me how I can be reimbursed for my loss in the matter.

At the time the Lockes moved into the property I had an offer of \$8,000 cash. The property was damaged and destroyed to such a great extent in a period of six months, that the same party who was then willing to give \$8,500, would not purchase it at any price, and the house was sold for \$7,000. Further the use of the property at Toledo, which I have received in return for mine at

61 Mooresville is not as big a house, is not in as good repair, the lot is approximately one-fourth the size, it does not have a swimming pool, it does not have summer cooling. Please advise me further findings in this matter.

Very truly yours,

C. W. STONE.

CWS:IW.

In United States District Court

Memorandum opinion

Filed July 24, 1946

KLOEB, J.: This is a suit by the Administrator of the Office of Price Administration charging defendant with violations of the Emergency Price Control Act of 1942 as amended, and the Rent Regulation for Housing issued under the authority of the Act.

On August 1, 1944 defendant, for the first time, rented his house in Mooresville, Indiana but failed to file a registration statement with the Office of Price Administration as required by the Rent Regulation, 10 F. R. 3436. The house was rented up to and including April 1945 for \$75.00 per month. After some correspondence between the parties the Office of Price Administration issued an order on OPA Form D 38 which provided in part " * * * it is ordered that the maximum rent for the above-described accommodations be, and it hereby is, changed from \$75.00 per month to \$45.00 per month * * * effective beginning from the date of such first renting * * *". On the bottom of the form was a rubber-stamp printed notice providing "The landlord shall refund to the tenant any rent received on or after the effective date of this order in excess of the maximum rent established herein

(\$45.00 per month) within 30 days after date of this order." No refund having been made by the defendant complaint was filed on February 1, 1946 praying for damages of \$810.00, 62 treble the amount of the alleged overcharges for the nine months during which defendant rented the house.

The defendant claims that he did not rent his house and that the money he received from Mr. Locke (the occupant) was "the rent for premises at 2506 Scottwood Avenue, Toledo, Ohio—premises occupied by the defendant herein, under an agreement whereby Mr. Locke was to pay whatever rent was necessary for a residence for the defendant in the City of Toledo, Ohio, in exchange for immediate occupancy of the Charles Stone home at Mooresville, Indiana * * *". Defendant offered a written contract to prove the truth of this allegation.

As indicated at the trial such an arrangement appears to the Court to be merely a not too subtle subterfuge, and defendant must be held to have rented his property to Mr. Locke.

A more troublesome question is presented by the defense of the Statute of Limitations.

Section 4 (e) of the Rent Regulation for Housing as amended provides in part:

(e)—" * * * Within 30 days after so renting the landlord shall register the accommodations as provided in Section 7. The Administrator may order a decrease in the maximum rent as provided in Section 5 (c).

If the landlord fails to file a proper registration statement within the time specified (except where a registration statement was filed prior to October 1, 1943), the rent received for any rental period commencing on or after the date of the first renting or October 1, 1943, whichever is the later, shall be received subject to refund to the tenant of any amount in excess of the maximum rent which may later be fixed by an order under Section 5 (c) (1). Such amount shall be refunded to the tenant within 30 days after the date of issuance of the order."

Under the circumstances, therefore, there could be no violation of " * * * a regulation, order or price schedule prescribing a maximum price or maximum prices * * *". U. S. C. A.

50 App. 925 (e) since no such regulation or order 63 had been prescribed. And as plaintiff contends, after the Maximum Price Order here was prescribed under Sections 5 (c) (1) and 5 (d) of the Rent Regulation for Housing, Section 4 (e) of the same regulation, in effect, provides that the order prescribing the maximum price shall not be deemed violated prior to the expiration of the 30-day period after the date of the order. The Court agrees with plaintiff, therefore, that the violation of the order did not occur until July 30, 1945.

It does not follow, however, as plaintiff seems to contend, that the " * * * overcharge or overcharges upon which the action is based. * * *". U. S. C. A. 50 App. 925 (e) occurred, therefore, on July 30, 1945. The defendant did not on July 30, 1945 make an overcharge of \$270.00. U. S. C. A. 50 App. 925 (e) defines overcharges as "the amount by which the consideration exceeds the applicable maximum price. * * *". The applicable maximum price as prescribed by the order of June 29, 1945 was \$45.00 per month. The true situation, therefore, was that on June 29, 1945 the Office of Price Administration determined that the rent should have been \$45.00 per month, thus determining that there had been an overcharge of \$30.00 for each month. It is well settled that this Court has no jurisdiction to consider the validity of such an order.

It is upon overcharges of \$30.00 per month that the action is based, not on a single overcharge of \$270.00. Plaintiff is here seeking to recover damages under U. S. C. A. 50 App. 925 (e). That section " * * * establishes the sole means * * * whereby the Administrator on behalf of the United States may seek damages in the nature of penalty." *Porter vs. Warner Holding Company*, — U. S. —, slip sheet opinion dated June 3, 1946, 14 L. W. 4383. The evident plan of that section is to give a right to damages for each overcharge. *Gilbert vs. Thierry*, 58 F. Supp. 235 and authorities cited therein. The trouble with plaintiff's position is that it confuses the obligation of the landlord to refund, or make restitution, with the obligation to respond in damages. The former obligation exists only by virtue of Section 4 (e) of the

64 Rent Regulation for Housing. U. S. C. A. 50 App. 925 (e) imposes no obligation to refund or make restitution but only to respond in damages under certain conditions. It may well be that by virtue of the holding of the Supreme Court in *Porter vs. Warner Holding Company*, supra, plaintiff could enforce such a refund order by appropriate action under Section 925 (a). This action, however, is based on Section 925 (e) and "The time limitation expressed in 205 (e) 925 (e) operates as a limitation of the liability itself as created. * * *". *Bowles vs. American Distilling Company*, 62 F. Supp. 20, 22. For this reason the Court has jurisdiction to award damages under Section 925 (e) only as to overcharges occurring one year prior to the filing of the action. *Bowles vs. Gulf Refining Company*, 61 F. Supp. 149; *Bowles vs. American Distilling Company*, supra; *Thompson vs. Taylor*, 62 F. Supp. 930. Plaintiff is entitled to recover, therefore, only for the three months of February, March, and April of 1945.

The Court finds that there was no wilful violation and no failure to take practicable precautions on the part of the defendant.

Judgment will accordingly be entered against the defendant in the sum of \$90.00.

Plaintiff may have ten days in which to file Findings of Fact and Conclusions of Law in accordance with this opinion and the defendant may have ten days thereafter in which to file corrections or suggested additions thereto.

Toledo, Ohio, July 1946.

(S) FRANK L. KLOER,
United States District Judge.

65

In United States District Court

Findings of fact and conclusions of law

Filed September 19, 1946

1. The plaintiff is the Administrator of the Office of Price Administration.

2. At all times pertinent hereto the defendant, Charles Stone, was the landlord of housing accommodations within the Columbus, Indiana, rental area, known and numbered as 148 West Washington Street, Mooresville, Indiana.

3. Pursuant to the provisions of Section 2 of the Emergency Price Control Act, as amended, 50 U. S. C. App. Section 902, the Price Administrator issued and there was published in the Federal Register "Rent Regulations for Housing" effective June 1, 1943 (8 F. R. 7322), hereinafter referred to as the "regulation," which regulation, as amended, has been at all times since the date of its issuance, in full force and effect. The regulation, as amended, established maximum rents for housing accommodations within the Columbus, Indiana, rental area.

4. Section 4 (e) of the Regulation provides that where property is rented for the first time after the effective date of the regulation,

(e)—" * * * Within 30 days after so renting the landlord shall register the accommodations as provided in Section 7. The Administrator may order a decrease in the maximum rent as provided in Section 5 (c).

"If the landlord fails to file a proper registration statement within the time specified (except where a registration statement was filed prior to October 1, 1943), the rent received for any rental period commencing on or after the date of the first renting or October 1, 1943, whichever is the later, shall be received subject to refund to the tenant of any amount in excess of the maximum rent which may later be fixed by an order under Section 5 (c) (1). Such amount shall be refunded to the tenant within 30 days after the date of issuance of the order."

5. On August 1, 1944, the defendant, for the first time after the effective date of the Regulation, rented his house at Mooresville, Indiana, but failed to file a registration statement with the Office of Price Administration as required by the Regulation.

6. From August 1, 1944, through April 1945, the defendant demanded and received the sum of \$75.00 per month as rental. On June 30, 1945, the Office of Price Administration issued an order, which provided in part:

"* * * it is ordered that the maximum rent for the above-described accommodations be, and it hereby is, changed from \$75.00 per month to \$45.00 per month * * * effective beginning from the date of such first renting * * *. The landlord shall refund to the tenant any rent received on or after the effective date of this order in excess of the maximum rent established herein (\$45.00 per month) within 30 days after date of this order."

7. No refund having been made by the defendant pursuant to the order of the Office of Price Administration, this action was instituted on February 1, 1945, for damages in the sum of \$810.00, treble the amount ordered refunded by the Office of Price Administration.

8. The defendant violated the order of the Office of Price Administration when he failed to refund to his tenant the excess of the rental received within 30 days after issuance of that order, viz. July 30, 1945.

9. The defendant was neither wilful nor did he fail to take practicable precautions.

Conclusions of law

1. The court has jurisdiction of the within proceedings pursuant to the provisions of Section 205 (c) and 205 (e) of the Emergency Price Control Act, 50 U. S. C. A. App. Section 901 et seq.

2. The court has jurisdiction over the parties hereto by virtue of Section 205 (c) of the Act.

3. The defendant, Charles Stone, has violated the provisions of Section 4 (a) of the Emergency Price Control Act of 1942, as amended, and; more particularly, Section 4 (e) of the Rent Regulation for Housing; further, on July 30, defendant violated the order the Office of Price Administration issued on June 30, 1945, ordering the defendant to refund to his tenant all rental received from him in excess of the maximum fixed by the order.

4. This action is based on Section 205 (e) of the Act, 50 U. S. C. A. app. 925 (e), seeking treble damages for overcharges of \$30.00 per month for a period of nine months as established by the order of June 30th.

5. By the one-year statute of limitations expressed in the Act, this court has jurisdiction to award damages under Section 925 (e) only for overcharges occurring within one year prior to the filing of this action.

6. The action of the defendant was neither wilful nor the result of failure to take practicable precautions.

7. The plaintiff is therefore entitled to recover damages for the three months of February, March, and April of 1945, and judgment is therefore entered in favor of the plaintiff against the defendant, Charles Stone, in the amount of \$90.00, together with the costs of this proceeding.

(S) FRANK L. KLOEB,
United States District Judge.

In United States District Court

Judgment

Filed September 23, 1946

This cause having heretofore come on for hearing on the pleadings, stipulations and evidence, and the Court having filed its findings of fact and conclusions of law, finding, on the issues joined, for plaintiff, now

It is ordered that judgment in the sum of Ninety (90.00) Dollars be and it hereby is entered for plaintiff, together with costs of suit, for the collection of which execution is awarded.

(S) FRANK L. KLOEB,
United States District Judge.

68

In United States District Court

Notice of appeal

Filed December 20, 1946

Notice is hereby given that Philip B. Fleming, Administrator of the Office of Temporary Controls, the plaintiff above named, hereby appeals to the Circuit Court of Appeals for the Sixth Circuit from the following-described order of the Court, entered in this action on September 23, 1946:

"It is ordered that judgment in the sum of Ninety (\$90.00) Dollars be and it hereby is entered for plaintiff, together with costs of suit for the collection of which execution is awarded."

(S) ALBERT M. DREYER,
Washington 25, D. C.,

(S) SAMUEL J. WEINER,
Cleveland, Ohio,

Attorneys for Appellant, Philip B. Fleming.

In United States District Court

Designation of record on appeal

Filed December 20, 1946

To the Clerk:

Please prepare transcript of record for the Circuit Court of Appeals in the above-entitled cause, and include therein the entire record and all the proceedings and evidence in the action, including, but not limited to, the following papers and orders:

1. Complaint.
2. Entry of appearance of Charles Stone as defendant.
3. Answer.
4. Plaintiff's Exhibits 1 to 6, inclusive.
5. Defendant's Exhibits A to H, inclusive.
6. Memorandum opinion of Judge Frank L. Kloeb, entered July 24, 1946.
- 69 7. Findings of fact and conclusions of law of Judge Frank L. Kloeb.
8. Order of the Court awarding judgment for plaintiff in the sum of Ninety (\$90.00) Dollars, together with costs of suit, for the collection of which execution was awarded, entered September 23, 1946.
9. Notice of appeal.
10. Designation of record and acknowledgment of service thereon.
11. Reporter's transcript of all the proceedings and evidence in the above-entitled action.

DAVID LONDON,
Washington, D. C.,

ALBERT M. DREYER,
Washington, D. C.,

SAMUEL J. WEINER,
Cleveland, Ohio,
Counsel for Plaintiff-Appellant.

CERTIFICATE OF SERVICE

The undersigned, attorney for plaintiff-appellant in the above-entitled action, hereby certifies that he served the above Designation of Record upon Appeal for defendant-appellee, by mailing a copy of the within Designation of Record to the defendant and his attorney, Etheleen M. Stevens, at their last-known addresses.

(S) SAMUEL J. WEINER,
Attorney for Plaintiff-Appellant.

In United States District Court

Order substituting party plaintiff

Filed December 18, 1946

The application of Philip B. Fleming to be substituted as plaintiff herein having come on for hearing this 18th day of December, 1946, and it appearing to the court that said applicant is the duly appointed, qualified and acting Temporary Controls Administrator; that Paul A. Porter, the plaintiff herein, ceased to hold the office of Price Administrator, Office of Price Administration, on December 12, 1946; that by virtue of Executive Order 9809 (11 F. R. 14281), issue by the President of the United States on December 12, 1946, said applicant has been invested with all of the functions of the Price Administrator, Office of Price Administration, with full power and authority to continue and maintain in his name all civil proceedings heretofore instituted by the Price Administrator, and that there is substantial need for continuing and maintaining this action; that due notice of this application has been given to the defendant.

Now, therefore, it is hereby ordered that said applicant in his capacity of Administrator of the Office of Temporary Controls, be and is hereby substituted as party plaintiff herein in the place and stead of Paul A. Porter, Price Administrator of the Office of Price Administration.

(S) JONES, Judge.

71 [Clerk's certificate to foregoing transcript omitted in printing.]

72 In the United States Circuit Court of Appeals for the Sixth Circuit

Cause argued and submitted

June 5, 1947

Before HICKS, ALLEN, and MILLER, Circuit Judges

This cause is argued by Irving M. Gruber for Appellant and by Etheleen M. Stevens for Appellee and is submitted to the court.

In United States Circuit Court of Appeals

Judgment

Appeal from the District Court of the United States for the Northern District of Ohio.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Ohio, and was argued by counsel.

73 On consideration whereof, It is now here ordered and
adjudged by this Court that the judgment of the said Dis-
74 trict Court in this cause be and the same is hereby affirmed.
[File endorsement omitted.]

In United States Circuit Court of Appeals for the Sixth Circuit

No. 10419

FRANK R. CREEDON, OFFICE OF HOUSING EXPEDITOR, APPELLANT

v.

CHARLES STONE, APPELLEE

Appeal from the United States District Court for the Northern
District of Ohio

Opinion

Filed July 28, 1947

Before HICKS, ALLEN, and MILLER, Circuit Judges

ALLEN, Circuit Judge. This is an appeal by the Administrator of the Office of Temporary Controls from a decision of the District Court in an action to recover treble damages claimed to arise by reason of overcharges for rent made in violation of a regulation of the Administrator. The court rendered judgment in the amount of \$90, one-third of the claimed overcharge, and refused damages by way of penalty.

The facts are not in controversy. On July 28, 1944, the appellee entered into an agreement with one C. F. Locke whereby Locke was made "an agent" for the appellee "to procure living accommodations in Toledo, Ohio." Locke succeeded in securing accommodations, and as a result, appellee moved from Mooresville, Indiana to Toledo, and Locke took over possession and occupancy of appellee's home at Mooresville. The first occupancy of the Mooresville house was on August 1, 1944, and a rent of \$75 per month was charged through April, 1945.

The appellee inquired of the O. P. A. Regional Office in Toledo prior to the transaction described above as to whether it was permissible to trade houses, and was informed that no regulation existed covering trades. Claiming to believe that he and
75 Locke had effected a trade, although Locke did not own the Toledo property, appellee did not register the Mooresville

property with the O. P. A. January 16, 1945, appellee wrote the O. P. A. about the arrangement and enclosed a copy of the contract. The only response that appellee received was a booklet explaining the rent regulations.

An investigation was later conducted by the O. P. A. Area Rent Office, and on June 11, 1945, the Area Rent Director wrote the appellee, directing him to register the Mooresville property, which order was complied with. A hearing with reference to these matters was later held, as a result of which the Area Rent Director issued an order dated June 28, 1945, reducing the rent from \$75 to \$45 per month, effective from the date of the first rental, or from the beginning of the first rental period. This order decreasing the maximum rent also required the landlord, in accordance with § 4 (e) of the Rent Regulation for Housing, to refund to the tenant within thirty days after date of the order any rent received on or after the effective date of the order in excess of the maximum rent. No refund was made, and this action was instituted on February 1, 1946, asking judgment for \$810 and costs, the aggregate amount of the monthly overcharges being \$270.

The appellee urged below that the transaction was a trade, but this contention was correctly rejected by the court. The District Court found, however, that the arrangement was not a wilful violation of the regulations, and that the appellee did not fail to take practicable precautions under the statutes and the regulations, and accordingly refused damages over and above the overcharge. It further held that § 205 (e) of the Emergency Price Control Act as amended, 50 U. S. C., § 925 (e), printed in the margin,¹ required the court to award damages only for

¹Section 205 (e):

If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may, within one year from the date of the occurrence of the violation, except as hereinafter provided, bring an action against the seller on account of the overcharge. In such action, the seller shall be liable for reasonable attorney's fees and costs as determined by the court, "whichever of the following sums is the greater: (1) Such amount not more than three times the amount of the overcharge, or the overcharges, upon which the action is based as the court in its discretion may determine, or (2) an amount not less than \$25 nor more than \$50, as the court in its discretion may determine: Provided, however, that such amount shall be the amount of the overcharge or overcharges or \$25, whichever is greater, if the defendant proves that the violation of the regulation, order, or price schedule in question was neither wilful nor the result of failure to take practicable precautions against the occurrence of the violation. For the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be, and the word 'overcharge' shall mean the amount by which the consideration exceeds the applicable maximum price. If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, and the buyer either fails to institute an action under this subsection within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the action, the Administrator may institute such action on behalf of the United States within such one-year period. If such action is instituted by the Administrator, the buyer shall thereafter be barred from bringing an action for the same violation or violations. Any action under this subsection by either the buyer or the Administrator, as the case may be, may be brought in any court of competent jurisdiction. A judgment in an action for damages under this subsection shall be a bar to the recovery under this subsection of any damages in any other action against the same seller on account of sales made to the same purchaser prior to the institution of the action in which such judgment was rendered.

76 overcharges occurring within one year prior to the filing of the action, which in this case would be for the months of February, March, and April, 1945.

The record clearly sustains the District Court's finding that appellee's violation was not wilful nor the result of failure to take practicable precautions to prevent its occurrence.

Section 205. (e) provides that judgment shall be "not more than three times the amount of the overcharge, or the overcharges, upon which the action is based as the court in its discretion may determine," and also provides that when the violation was neither wilful nor the result of failure to take practicable precautions, the amount of the judgment shall be "an amount of the overcharge or overcharges or \$25, whichever is greater."

If the trial court had not made the finding with reference to lack of wilful violation and non-failure to take practicable precautions, within its discretion it could have entered judgment for the amount of the overcharge instead of for the treble amount and under this record it would not have abused its discretion. The finding was made, however, and as made required the District Court under § 205. (e) to give judgment only in the face amount of the overcharge. The finding is clearly supported by the efforts of the appellee to secure information from the O. P. A. office with reference to his real estate transaction. Query, whether the mailing of a booklet of 25 printed pages, without any specific answer or any indication of the particular paragraph deemed to be applicable, is a proper response to a letter addressed to a governmental bureau asking for information. The District Court did not err in concluding that appellee's failure to pick out the precise paragraph applicable to him and to proceed to register the property at that precise time, did not constitute wilfulness or

77 negligence. We find no error in the conclusion of the District Court upon this point.

The principal legal question presented is whether the one-year statute of limitations provided by the Act commences to run from the time of overcharge, as held by the District Court, or from the time of the failure to refund, as contended by the Administrator.

We think the judgment of the District Court is clearly correct. Section 205 (e) is "the sole means whereby individuals may assert their private right to damages and whereby the Administrator on behalf of the United States may seek damages in the nature of penalties." *Porter v. Warner Holding Co.*, 328 U. S. 395, 401, 402.

Read in the ordinary sense, as applied to the payment of rent, § 205 (e) plainly provides that each separate overcharge is the violation referred to. Each separate overcharge is certainly a

violation of the regulation or order "prescribing a maximum price," and each separate overcharge gives rise to a cause of action for the violation. *Gilbert v. Thierry*, 58 Fed. Supp. 235 (D. C. Mass.), affirmed, *Thierry v. Gilbert*, 147 Fed. (2d) 603, 604 (C. C. A. 1). There is no merit in the contention that the violation upon which this cause of action is based is the failure or refusal to make the refund. Such a failure or refusal is a violation of § 4 (e) of the Rent Regulation for Housing, and if a refund order is issued by the Administrator, it is a violation of the order; but such failure or refusal is not the violation specified in § 205 (e), which is the violation of the "maximum price regulation" or order. To causes of action based on these overcharges, since they are violations under § 205 (e), the one-year statute of limitations applies.

The action was filed February 1, 1946, and recovery here, under the court's finding as to lack of wilfulness and negligence, was limited to overcharges occurring in the twelve months beginning February 1, 1945. But during this time overcharges were made only in three months, February, March, and April 1945, and the court properly entered judgment for \$90, the aggregate amount of the overcharges for those three months. Since the overcharge for each month constituted a separate and distinct violation (*Thierry v. Gilbert*, *supra*), the Administrator was not authorized to cumulate the separate overcharges of the months preceding February 1, 1945, together with the succeeding months, into a total of \$270, and recover for that amount.

The judgment of the District Court is affirmed.

78 [Clerk's certificate to foregoing transcript omitted in printing.]

79 Supreme Court of the United States

Order allowing certiorari

(Filed December 8, 1947)

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted, limited to the question as to the statute of limitations presented by the petition for the writ. The case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[Endorsement on cover:] File No. 52622. U. S. Circuit Court of Appeals, Sixth Circuit. Term No. 392. Frank R. Creedon, Housing Expediter, Office of the Housing Expediter, Petitioner vs. Charles Stone. Petition for writ of certiorari and exhibit thereto. Filed October 8, 1947. Term No. 392 O. T. 1947.

